

AMENDED IN SENATE MAY 6, 2008
AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1400

Introduced by Senator Simitian

February 21, 2008

An act to amend Section 17539.15 of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 1400, as amended, Simitian. Sweepstakes.

Existing law provides that any person who contrives, prepares, sets up, proposes, or draws any lottery is guilty of a misdemeanor.

Existing law defines "sweepstakes" to mean any procedure for the distribution of anything of value by lot or by chance that is not unlawful. Existing law sets forth specified advertising and solicitation requirements with regard to the operation of sweepstakes, as specified.

This bill would prohibit sweepstakes materials, as defined, from representing that a person has been specially selected, as defined, when more than 25% of the persons receiving the materials ~~received~~ *have* the same materials, and would impose various requirements ~~where less than 25% of the persons received the same materials~~ *chance of winning, and would require sweepstakes materials that are not subject to that prohibition to include specified information about the number of persons receiving the sweepstakes materials.* The bill would also prohibit sweepstakes materials from making various other misleading or false representations. The bill would also require sweepstakes materials to disclose the date the final winner will be determined. The bill would specify that the sweepstakes sponsor, as defined, may not condition the collection of a prize upon payment of a fee, and would prohibit ~~these~~

sweepstakes sponsors from sharing or selling the names and information of its customers or participants without their *prior* express consent. The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17539.15 of the Business and Professions
2 Code is amended to read:

3 17539.15. (a) Sweepstakes materials shall not represent, taking
4 into account the context in which the representation is made,
5 including, without limitation, emphasis, print, size, color, location,
6 and presentation of the representation and any qualifying language,
7 that a person is a winner or has already won a prize or any
8 particular prize unless that person has in fact won a prize or any
9 particular prize. If the representation is made on or visible through
10 the mailing envelope containing the sweepstakes materials, the
11 context in which the representation is to be considered, including
12 any qualifying language, shall be limited to what appears on,
13 appears from, or is visible through, the mailing envelope.

14 (b) Sweepstakes materials shall include a ~~prominent~~ *clear and*
15 *conspicuous* statement of the no-purchase-necessary message, in
16 readily understandable terms, in the official rules included in those
17 sweepstakes materials and, if the official rules do not appear
18 thereon, on the entry-order device included in those sweepstakes
19 materials. The no-purchase-necessary message included in the
20 official rules shall be set out in a separate paragraph in the official
21 rules and be printed in capital letters in contrasting typeface not
22 smaller than the largest typeface used in the text of the official
23 rules.

24 (c) Sweepstakes entries not accompanied by an order for
25 products or services shall not be subjected to any disability or
26 disadvantage in the winner selection process to which an entry
27 accompanied by an order for products or services would not be
28 subject.

29 (d) Sweepstakes materials shall not represent that an entry in
30 the promotional sweepstakes accompanied by an order for products
31 or services will be eligible to receive additional prizes or be more
32 likely to win than an entry not accompanied by an order for

1 products or services or that an entry not accompanied by an order
2 for products or services will have a reduced chance of winning a
3 prize in the promotional sweepstakes.

4 (e) Sweepstakes materials shall not represent that a person has
5 been specially selected when more than 25 percent of the persons
6 receiving the sweepstakes materials ~~have received the same~~
7 ~~sweepstakes materials~~ *the same chance of winning*.

8 (f) If sweepstakes materials represent that a person has been
9 specially selected consistent with subdivision (e), then immediately
10 adjacent to that representation, in the same print, size, and color
11 as the representation, the solicitation shall include a statement of
12 the number of persons in the group, or purported group of persons,
13 that received the same sweepstakes materials.

14 (g) Sweepstakes materials shall not represent that the person
15 receiving the solicitation has received any special treatment or
16 personal attention from the sweepstakes sponsor or any officer,
17 employee, or agent of the sweepstakes sponsor.

18 (h) Sweepstakes materials shall not represent that a person is
19 being notified a second or final time of the opportunity to receive
20 or compete for a prize, unless that representation is true.

21 (i) Sweepstakes materials shall not represent that a prize notice
22 is urgent or otherwise convey an impression of urgency by use of
23 description, phrasing on a mailing envelope, or similar method,
24 unless there is a limited time period in which the recipient must
25 take some action to claim, or be eligible to receive, a prize, and
26 the date by which that action is required appears immediately
27 adjacent to each representation of urgency in the same print, size,
28 and color as each representation of urgency.

29 (j) Sweepstakes materials shall not do any of the following:

30 (1) Simulate or falsely represent that it is a document authorized,
31 issued, or approved by any court, official, or agency of the United
32 States or any state, or by any lawyer, law firm, or insurance or
33 brokerage company.

34 (2) Create a false impression as to its source, authorization, or
35 approval.

36 (k) Sweepstakes materials shall disclose the date the final winner
37 will be determined.

38 (l) For purposes of this section:

1 (1) “No-purchase-necessary message” means the following
2 statement: “No purchase or payment of any kind is necessary to
3 enter or win this sweepstakes.”

4 (2) “Official rules” means the formal printed statement, however
5 designated, of the rules for the promotional sweepstakes appearing
6 in the sweepstakes materials. The official rules shall be prominently
7 identified and all references thereto in any sweepstakes materials
8 shall consistently use the designation for the official rules that
9 appears in those materials. All sweepstakes materials shall contain
10 a copy of the official rules.

11 (3) “Sweepstakes materials” means any of the following:

12 (A) Sweepstakes entry materials.

13 (B) Solicitation materials connected to or promoting
14 sweepstakes.

15 (C) Solicitation materials selling information regarding
16 sweepstakes.

17 (4) “Specially selected” means a representation that a person is
18 *a winner, a finalist, in first place or tied for first place, or otherwise*
19 among a limited group of persons with an enhanced likelihood of
20 receiving ~~sweepstakes materials~~ *a prize*.

21 (m) (1) A sweepstakes sponsor may not charge a fee as a
22 condition of collecting a prize.

23 (2) Sweepstakes sponsors are prohibited from sharing or selling
24 the names and information of their customers and participants
25 related to sweepstakes without the *prior* express consent of their
26 customers or participants.

27 (3) For the purposes of this section, “sweepstakes sponsor”
28 means either of the following:

29 (A) A person or entity that operates or administers a sweepstakes
30 as defined in paragraph (12) of subdivision (a) of Section 17539.5.

31 (B) A person or entity that offers, by means of a notice, a prize
32 to another person in conjunction with any real or purported
33 sweepstakes that requires or allows, or creates the impression of
34 requiring or allowing, the person to purchase any goods or services,
35 or pay any money, as a condition of receiving, or in conjunction
36 with allowing the person to receive, use, or obtain a prize or
37 information about a prize.